

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

National Pasteurized
Eggs, LLC

v.

Civil No. 07-103-JL

L. John Davidson

PROCEDURAL ORDER

On June 8, this court held a telephone conference with counsel to discuss, inter alia, the motion practice surrounding the various affidavits submitted by the defendant in connection with the parties' motions for summary judgment. Counsel agreed that NPE's objections to the versions of those affidavits submitted on May 11 (document nos. 88-1, 88-2, and 88-3) were to be overruled so that those versions of the affidavits could be considered in ruling on the summary judgment motions.

Counsel further agreed that all previous versions of those affidavits would be not be considered, which means that the defendant's motion for leave to file substitute affidavits (document no. 80) and the plaintiffs' motion to strike those substitute affidavits (document no. 84) are DENIED as moot. Counsel also agreed that the plaintiff's motion to strike the defendant's summary judgment motion and supporting memorandum (document no. 85) was to be DENIED as well. The plaintiff's

motion to strike the prior versions of those materials (document no. 71) is DENIED as moot. The plaintiff shall file its response to the defendant's summary judgment motion, and its reply to the defendant's objection to the plaintiff's summary judgment motion, within 30 days of this order. The defendant shall file his reply, if any, to the plaintiff's objection within 14 days of its filing. There shall be no surreplies.

Finally, counsel also agreed that the defendants's counsel of record is to be sanctioned for his filing of the various deficient affidavits in connection with the summary judgment motions, and that the sanction will take the form of payment of at least some of the attorneys' fees and costs reasonably incurred by the plaintiff in responding to those deficient affidavits. To that end, counsel shall file a joint written report with the court on or before June 17, 2010, indicating that they have agreed on the sum that defendant's counsel will pay, or, if they have not reached agreement, each party's position on that issue. If agreement has not been reached, the court will decide the plaintiff's reasonable attorneys' fees based solely on the information in the report.

Counsel are commended for their efforts in resolving these issues without further expenditures of their clients' resources, or those of the court.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: June 9, 2010

cc: Peter G. Callaghan,
D. William Toone, Esq.
Paul C. Bordeau, Esq.